IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

SA.No. 266 of 1994(F)

AS.23/1990 of ADDL.SUB COURT,NORTH PARAVUR
OS.520/1987 of MUNSIFF COURT,ALUVA

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APPELLANTS/APPELLANTS/DEFENDANTS 1 TO 4:

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1. KERALA STATE REP. BY DISTRICT COLLECTOR, ERNAKULAM

2. DIVISIONAL FOREST OFFICER,, KODANADU.

3. FOREST RANGE OFFICER, KERALA STATE BAMBOO CORPORATION, ANGAMALY

4. MANAGING DIRECTOR, KERALA STATE BAMBOO CORPORATION ANGAMALY

BY GOVERNMENT PLEADER K.G.BHASKARAN

RESPONDENT/RESPONDENT/PLAINTIFF:

ANNAKUTTY THOMAS, PROPRIETOR OF ASSOCIATED AGENCIES, KALADY KARA, MANICKAMANGALAM VILLAGE, ALUVA TALUK.

BY ADV. SRI.T.K.VENUGOPALAN
SRI.VPK.PANICKER
SRI.S.VIDYASAGAR

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A.NO. 266 OF 1994

Dated 29th June 2007

J U D G M E N T

Respondent is the plaintiff in O.S.520 of 1987. Appellants are defendants. Respondent instituted the suit seeking a decree for permanent prohibitory injunction restraining appellants from obstructing respondents in the business of stocking Bamboo reeds and mats or doing business therein. Respondent contended that she is running a business in Bamboo mats and is having a godown at Kalady and Kottayam and her father-in-law was doing that business for 30 years and had obtained registration and 4th appellant Kerala State Bamboo Corporation is attempting to deprive respondent the business on the basis that Bomboo is a forest product. It was contended that appellants are not entitled to obstruct respondent from doing the business. Appellants in the written statement contended that business of the respondent in Bamboo mats is unauthorised and only the 4th appellant is have a right to conduct such business and under

Section 27(2) A of Forest Act, Bamboo is forest product respondent is liable to be punished for procuring forest product unauthorisedly and therefore respondent is not entitled to decree sought for.

2. Learned Munsiff on the evidence of Pws.1 to 5, DW1 and Exts.A1 to A15 and B1 to B6 dismissed the suit holding that Bamboo being a forest product as defined under Kerala Forest Act and business of respondent is unauthorised and therefore she is not entitled to the decree sought for. Respondent challenged the decree and judgment before Sub court, North Paravur in A.S.23 of 1990. First appellate court on re-appreciating evidence held that under Section 2 (f) of Kerala Forest Act only if reeds in the possession of the respondent is brought from the forest, it could be termed as forest produce and not otherwise and therefore respondent is entitled to the decree sought for. Learned Sub Judge granted the decree providing that decree is only against such Bamboo mats and reeds which are not brought from or found in the forest as defined under Section 2 (f) (ii) of Kerala Forest Act. That decree and judgment granted by first appellate court is challenged in the second appeal.

3. Second appeal was admitted formulating the

following substantial questions of law.

> 1) Whether on the facts and in the circumstances of the case, bamboo mats come within 'the ambit of forest reeds' as defined under section 2(f)ii (b) of the Kerala Forest Act 1961.
>
> 2) Whether on the facts and circumstances of the case and also in view of the fact that the state is having monopoly over bamboo reeds, State alone have authority to deal with bamboo reeds.

4. Learned Government Pleader and learned counsel appearing for respondent were heard.

5. Section 2 (f) defines the "forest produce" as follows.

> 2 (f) "forest produce" includes--
>
> (i) the following whether found in, or brought from, a forest or not, that is to say--
>
> timber, charcoal, wood-oil, gum, resin, natural varnish, bark, lac, fibres and roots of sandalwood and rosewood; and
>
> (ii) the following when found in, or brought from, a forest, that is to say,--
>
> (a) trees and leaves, flowers and fruits, and all other parts or

produce not hereinbefore mentioned, of trees;

(b) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants; and

(c) silk cocoons, honey and wax

(d) peat, surface soil, rock and minerals (including limestone, laterite, mineral oils and all products of mines or quarries)

Definition of forest produce makes the position clear. As far as timber, charcoal, wood-oil, gum, resin, natural varnish, bark, lac, fibres and roots of sandalwood and rosewood which come within the scope of clause (i) of sub section 2(f), whether they are found in or brought from a forest or not, they are forest produce. But as far as the items covered under clause (ii) of section 2(f), question they are forest produce only if they are found in or brought from a forest. Therefore, in respect of items covered under clause (i) of section 2(f) question whether they are found in or brought from the forest or not is immaterial. They are forest produce. But as far as the items covered under clause (ii), they are forest produce only if they were found in or brought from the forest. If not they are not

forest produce. Under sub clause (a) of clause (ii), trees, leaves, fruits, flowers and all other parts of produce not mentioned earlier and under clause (b) plants not being trees including grass, creepers, reeds and moss and all parts or produce of such plants are covered. First appellate court rightly interpreted clause 2 f(ii) of the Act held that all bamboos are not forest produce as claimed by the appellants. Learned Sub Judge granted a decree making the position clear that the decree is effective only in respect of those Bamboo mats and reeds which are not brought from or found in the forest as defined under Section 2(f) (ii) of Kerala Forest Act. The decree will not prevent appellants from taking action if the bamboo reeds are brought from the forest and satisfies the definition of forest produce as provided under Section 2(f) of Kerala Forest Act. In such circumstances, no interference is warranted in the decree granted by first appellate court.

Second appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.266 OF 1994

29TH JUNE 2007

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